

**NOTICE OF INTENT TO
AMEND AND ADOPT ADMINISTRATIVE RULES
RELATING TO STANDARDS OF QUALITY FOR WATERS OF THE
STATE**

TAKE NOTICE that the North Dakota Department of Health (NDDH) and the Environmental Health Section Chief, on behalf of the North Dakota Department of Environmental Quality (NDDEQ), will hold a public information meeting and hearing on proposed changes to the N.D. Admin. Code. The proposed changes are amendments to the Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33-16-02.1, and adoption of the Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33.1-16-02.1. The proposed changes are not expected to have an impact on the regulated community in excess of \$50,000. The hearing will be held on March 12, 2018, beginning at 5:30 p.m., at the NDDH, 918 East Divide Avenue, Bismarck, ND 58501.

The proposed amendments to the Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33-16-02.1, are the result of the NDDH's periodic review of the Standards of Quality for Waters of the State, as required by 33 U.S.C. § 1313(c). As proposed, the NDDH's amendments will provide clarification in the standards and include changes to the narrative and numeric criteria, definitions and formatting. Specifically, the NDDH is proposing the following amendments to N.D. Admin. Code Chapter 33-16-02.1:

1. Amend N.D. Admin. Code § 33-16-02.1-04 by adding definitions for "nutrients," Admin. Code § 33-16-02.1-04 (11) and "eutrophication," Admin. Code § 33-16-02.1-04 (12).
2. Amend N.D. Admin. Code § 33-16-02.1-05 by adding compliance schedules for achieving standards for permitted dischargers.
3. Amend N.D. Admin. Code § 33-16-02.1-08(1)(a) by adding a narrative "free from" criterion for nutrients, Admin. Code § 33-16-02.1-08(1)(a)(6).
4. Revise N.D. Admin. Code § 33-16-02.1-09(3)(a) by changing text for consistency.
5. Revise N.D. Admin. Code § 33-16-02.1-09(3)(b) by adding text for clarity.
6. Revise Admin. Code § 33-16-02.1-09(3) by placing site-specific criteria for the Sheyenne River in Admin. Code § 33-16-02.1-09(3)(c).
7. Revise Admin. Code § 33-16-02.1-09(3) by relocating Substance or Characteristic, Maximum Limits, and 131.10.(b) Requirements into reformatted Table 1.
8. Revise Admin. Code § 33-16-02.1-09(3) by modifying the text for consistency and accuracy and re-alphabetizing (c) through (g).
9. Revise Admin. Code § 33-16-02.1-09(3) by adding Admin. Code § 33-16-02.1-09(3)(f), clarifying the temperature and oxygen exemption for wetlands, including isolated ponds, class 4 lakes not listed in Appendix II, sloughs and marshes.

10. Revise Admin. Code § 33-16-02.1-09(3)(e)(1) by changing text for consistency and clarity.
11. Amend Admin. Code § 33-16-02.1-09(3)(e) by adding temperature and oxygen exemption for wetlands and class 4 lakes, Admin. Code § 33-16-02.1-09(3)(e)(6).
12. Revise Admin. Code § 33-16-02.1-09(3)(e)(6) to Admin. Code § 33-16-02.1-09(3)(e)(7).
13. Revise Admin. Code § 33-16-02.1-09(3), Table 1 by reformatting into rows and columns and adding beneficial use.
14. Revise Admin. Code § 33-16-02.1-09(3), Table 2 by:
 - Removing the chemical compound delta-BHC (hexachlorocyclonehexane-delta).
 - Correcting the Chemical Abstract Service Number for PCB-1016 from 2674-11-2 to 726764-11-2.
 - Updating the chemical name of 4,6-Dino-o-cresol (4,6-Dinitro-2-methylphenol) to 2-Methyl-4,6-Dinitrophenol and the associated acute and chronic criteria from 13 and 280 micrograms per liter ($\mu\text{g/L}$) to 2 and 30 $\mu\text{g/L}$.
 - Updating the chemical name p-Chloro-m-cresol(4-chloro-3-methylphenol) to 3-Methyl-4-Chlorophenol.
 - Updating aquatic life chronic and acute criteria for cadmium to 1.8 and 0.72 $\mu\text{g/L}$, respectively, to reflect the most current scientific data.
 - Correcting acute criteria for Endrin from 0.09 $\mu\text{g/L}$ to 0.86 $\mu\text{g/L}$.
 - Updating the Human Health Criteria to match the 2015 EPA ambient water quality criteria for the protection of human health for all priority pollutants and the five select non-priority pollutants: barium, chlorophenoxy herbicide (2-4-D), methoxychlor, nitrates and pH.
 - Adding footnote 16 recognizing the biotic ligand model and water-effects ratio methods as options for developing site-specific copper criteria.
15. Revise Admin. Code § 33-16-02.1-10(1) and (2) by updating language for groundwater classifications and standards for clarification purposes.
16. Revise Admin. Code § 33-16-02.1, Appendix I, Stream Classifications, by rewording descriptions for improved clarity.

17. Revise Admin. Code § 33-16-02.1, Appendix II, Lake and Reservoir Classification, by updating the wording to include “other lentic waterbodies not listed, the parameters and criteria designated for Class III stream shall apply.”

The proposed rulemaking also implements Senate Bill Number 2327, enacted during the most recent legislative session, concerning the creation of the NDDEQ. The Environmental Health Section Chief, who is authorized under S.L. 2017, ch. 199, § 1 (S.B. 2327) to adopt rules for the NDDEQ, is proposing to adopt the NDDH’s Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33-16-02.1, including the proposed amendments, as the NDDEQ’s Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33.1-16-02.1. In addition, the proposed NDDEQ rules contain minor edits to reflect the creation of the new agency. If adopted, the proposed NDDEQ rules will be effective upon establishment of the NDDEQ, as specified in S.L. 2017, ch. 199, § 1 (S.B. 2327).

Comments regarding changes to the existing North Dakota Administrative Code will be considered. Comments regarding rules being transferred from NDDH to NDDEQ that are not substantively changed from existing code are beyond the scope of this proceeding and will not be considered because the transfer of authority is mandated by S.B. 2327. Comments regarding rules only changed in formatting or numbering that are not substantively changed from existing code, will be considered only as they relate to such changes.

The proposed changes and supporting material for both the NDDH and NDDEQ may be viewed at the NDDH, Division of Water Quality, 918 East Divide Avenue Bismarck, ND 58501-1947, or online at deq.nd.gov. A copy of the proposed changes and supporting material may be requested by writing to the above address or calling 701-328-5210.

Written comments on the proposed changes for both the NDDH and NDDEQ may be submitted to the NDDH, Division of Water Quality, 918 East Divide Avenue, Bismarck, ND 58501-1947 by March 23, 2018.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Division of Water Quality at the above address or telephone number at least seven days prior to the public hearing.

Dated this 10th day of January 2018.

L. David Glatt

Chief

Environmental Health Section